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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Penson v Titan National Pty Ltd (NSWCA) - judicial review - misconceived application for judicial review of decisions of Supreme Court judges - application dismissed (I B G)

Penson v Titan National Pty Ltd (No 5) (NSWCA) - judicial review - leave to appeal from seven decisions in relation to costs refused - no error in orders made - summons dismissed (I B G)

Mehmet v IOOF Investment Management Ltd (NSWSC) - contract - insurance - superannuation - consideration of claim for total and permanent disablement benefits not in accordance with good faith obligation - refusal of benefit set aside - matter remitted (I B)

Griffiths v State of New South Wales (No 2) (NSWSC) - pleadings - negligence - statement of claim dismissed - leave to appeal refused (I)

Barnes v State of Victoria (VSCA) - judicial review - disability services - s49 *Disability Act 2006* (Vic) did not give rise to obligation to provide support contended for by applicant - appeal dismissed (I G)

Hoskin v Greater Bendigo City Council (VSCA) - administrative law - human rights - environment and planning - conditional permit to construct and use mosque and associated facilities - leave to appeal refused (I B C G)

Winyu Pty Ltd v King (ACTSC) - security of payments - payment claim not a payment claim under *Building and Construction Industry (Security of Payment) Act 2009* (ACT) because it was given outside period identified in s15(4) - adjudicator's decision invalid - declaration (C)

Summaries With Link (Five Minute Read)

Penson v Titan National Pty Ltd [2015] NSWCA 404

Court of Appeal of New South Wales

Meagher, Gleeson & Simpson JJA

Judicial review - applicant sought judicial review of two decisions of Court of Appeal - in first decision Court dismissed application for leave to appeal in proceedings - in second decision Court refused to set aside or vary judgment in proceedings - respondents contended summons brought out of time - s69 *Supreme Court Act 1970* (NSW) - rr1.11(4), & 59.10 *Uniform Civil Procedure Rules 2005* (NSW) - held: orders of Supreme Court judges not amenable to review under s69 - application misconceived - application dismissed.

[Penson](#) (I B G)

Penson v Titan National Pty Ltd (No 5) [2015] NSWCA 405

Court of Appeal of New South Wales

Meagher, Gleeson & Simpson JJA

Judicial review - applicant commenced two proceedings addressing seven decisions of District Court of New South Wales relating to costs of proceedings commenced on behalf of company of which applicant was director against other company and its director - statement of claim dismissed - order made that applicant be jointly and severally liable with applicant's company for costs - applicant purported to seek judicial review of each decision under s69 *Supreme Court Act 1970* (NSW) or leave to appeal under s127 *District Court Act 1973* (NSW) - held: no basis for concluding there was error in making of any orders - extension of time to seek leave to appeal refused - summons dismissed.

[Penson](#) (I B G)

Mehmet v IOOF Investment Management Ltd [2015] NSWSC 1914

Supreme Court of New South Wales

Stevenson J

Contract - insurance - superannuation - plaintiff member of superannuation fund claimed entitlement to total and permanent disablement (TPD) benefits on 30/9/11 arising from an injury sustained on 12/3/01 - second defendant insurer denied claim - second defendant had taken over as insurer for fund on 1/11/07 - whether plaintiff had no TPD cover arising from injury because he was not "at work" on certain date in relation to take-over terms of policy - whether

trustee and insurer breached duties to act in utmost good faith in considering claim - held: insurer's and trustee's analysis was unreasonable - there was failure to approach task of considering application in accordance with good faith obligation - insurer's determination that plaintiff not entitled to TPD benefits set aside - matter remitted to insurer and trustee for reconsideration.

[Mehmet](#) (I B)

Griffiths v State of New South Wales (No 2) [2015] NSWSC 1932

Supreme Court of New South Wales

Schmidt J

Pleadings - plaintiff claimed damages for negligence in former employment as police officer - employment terminated after diagnosis with borderline personality disorder - defendant sought to dismiss statement of claim - *Civil Procedure Act 2005 (NSW)* - *Limitation Act 1969 (NSW)* - *Police Act 1900 (NSW)* - *Uniform Civil Procedures Rules 2005 (NSW)* - held: amended statement of claim difficult to understand and made identification of real issues difficult - plaintiff incapable of producing document which would adhere to Rules without legal assistance - proceedings in 7 years had not produced properly pleaded statement of claim - justice did not permit further time or costs to be wasted - not apparent plaintiff had reasonable cause of action - amended statement of claim dismissed - leave to replead refused.

[Griffiths](#) (I)

Barnes v State of Victoria [2015] VSCA 343

Court of Appeal of Victoria

Santamaria, Ferguson & McLeish JJA

Judicial review - disability services - applicant diagnosed with multiple sclerosis in 1982 - applicant had received funding from department since 2012 - applicant sought increase in funding to purchase new wheelchair - department informed applicant he would be considered with others who registered need for support - applicant contended statutory regime obliged Secretary to provide support - applicant sought order in nature of mandamus - trial judge held no obligation arose and dismissed proceeding - applicant sought leave to appeal - statutory construction - s49 *Disability Act 2006 (Vic)* - "request" - "agree" - held: s49(2) did not give rise to statutory duty for which applicant contended - appeal dismissed.

[Barnes](#) (I G)

Hoskin v Greater Bendigo City Council [2015] VSCA 350

Court of Appeal of Victoria

Warren CJ; Osborn & Santamaria JJA

Administrative law - human rights - environment and planning - permit applicant wished to construct and use mosque and associated facilities in industrial zone - Council granted permit - objectors sought review - Tribunal granted permit on amended conditions - objectors sought leave to appeal - objectors contended Tribunal failed to correctly construe s60(1)(f) *Planning and Environment Act 1987 (Vic)* which required Council and Tribunal to consider significant social effects - objectors also contended Tribunal wrongly treated absence of supporting

evidence as dispositive of case - *Charter of Human Rights and Responsibilities Act 2006* (Vic) - held: proposed grounds of appeal did not raise questions of law which were reasonably arguable - proposed grounds had no prospect of success - leave to appeal refused.

[Hoskin](#) (I B C G)

Winyu Pty Ltd v King [2015] ACTSC 387

Supreme Court of the Australian Capital Territory

Mossop AsJ

Security of payments - second defendant was claimant under *Building and Construction Industry (Security of Payment) Act 2009* (ACT) - adjudicator made determination in second defendant's favour against plaintiff - plaintiff contended adjudicator's decision invalid on basis payment claim did not relate to work carried out within 12 months prior to its service - s15(4) - "the end of the period of 12 months after the construction work to which the claim relates was last carried out or the related goods and services to which claim relates were last supplied" - held - payment claim of second defendant not a payment claim under Act because it was given outside period identified in s15(4) - adjudication decision invalid - declaration.

[Winyu](#) (C)

CRIMINAL

Executive Summary

R v Peart; R v Sorokin (NSWCCA) - criminal law - drug-related offences - preliminary issue - finding that MDMC was not capable of being a drug analogue of Methcathinone - appeal allowed - orders quashing counts in indictment set aside

Regina v Moore (NSWCCA) - criminal law - stay - manslaughter by criminal negligence - duty of care to deceased established - appeal allowed

Summaries With Link

R v Peart; R v Sorokin [2015] NSWCCA 321

Court of Criminal Appeal of New South Wales

Ward JA, R A Hulme & Fagan JJ

Criminal law - drug related offences - respondents charged in 2014 with three counts of drug-related offences - respondents pleaded not guilty - preliminary issue was whether importation offences sustainable with regard to s301.9(2) *Criminal Code 1995* (Cth) following amendments - trial judge concluded MDMC not capable of being a drug analogue of Methcathinone and quashed relevant counts on indictment - "drug analogue" - construction of s301.9(2) - ss5AA,

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15AB *Acts Interpretation Act 1901* (Cth) - *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012* (Cth) - s5C *Criminal Appeal Act 1912* (NSW) -), ss11.2A, 300.2, 301.1, 301.4, 301.9, 302.4 & 307.3 *Criminal Code 1995* (Cth) - *Criminal Code Regulations 2002* (Cth) - held: construction for which Crown contended was correct - orders quashing counts in indictments set aside - appeal allowed.

[R v Peart; R v Sorokin](#)

Regina v Moore [2015] NSWCCA 316

Court of Criminal Appeal of New South Wales

Bathurst CJ, Simpson JA & Bellew J

Criminal law - stay - manslaughter Director appealed against stay of indictment that charged respondent with manslaughter of deceased - issue was whether respondent could be held to have owed duty of care to deceased - Crown contended duty arose either pursuant to ss20(1) and/or (2) *Occupational Health and Safety Act 2000* (NSW), at common law or and/or pursuant to novel duty to take reasonable care for deceased's safety - held (by majority): trial judge erred in determination that respondent did not owe duty of care sufficient for finding of liability for manslaughter by criminal negligence - appeal allowed.

[Regina](#)

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De Profundis

BY CHRISTINA ROSSETTI

Oh why is heaven built so far,
Oh why is earth set so remote?
I cannot reach the nearest star
That hangs afloat.

I would not care to reach the moon,
One round monotonous of change;
Yet even she repeats her tune
Beyond my range.

I never watch the scatter'd fire
Of stars, or sun's far-trailing train,
But all my heart is one desire,
And all in vain:

For I am bound with fleshly bands,
Joy, beauty, lie beyond my scope;
I strain my heart, I stretch my hands,
And catch at hope.

[CHRISTINA ROSSETTI](#)

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